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3 **RESOLUTION NO. 2013-66**
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6 **A RESOLUTION OF THE MAYOR AND VILLAGE**
7 **COMMISSION OF THE VILLAGE OF BISCAYNE PARK,**
8 **FLORIDA, RELATING TO ZONING; APPROVING THE**
9 **APPLICATION OF APPLICANTS GORY HOLDINGS, INC.,**
10 **A/K/A BISCAYNE PARK SCHOOL AND EARLY LEARNING**
11 **CENTER) AND THE CHURCH OF THE RESURRECTION**
12 **FOR 11173 GRIFFING BLVD TO OBTAIN SITE PLAN**
13 **APPROVAL, A DEVELOPMENT AGREEMENT AS**
14 **REQUIRED BY SECTION 16.2.4, OF THE VILLAGE'S CODE**
15 **OF ORDINANCES; AND REVIEW PURSUANT TO SEC. 33-**
16 **151.15, OF THE MIAMI-DADE COUNTY CODE, AS**
17 **ADOPTED BY THE VILLAGE; AND REVIEWED PURSUANT**
18 **TO 10.2.4, OF THE VILLAGE'S CODE THAT REQUIRES 50**
19 **FEET BETWEEN THE PUBLIC GATHERING USE AND THE**
20 **RESIDENTIAL PROPERTY LINE; PROVIDING AN**
21 **EFFECTIVE DATE.**
22
23

24 WHEREAS, the applicant made applications for a development agreement approval for a
25 day care use consistent with 33-151.15 of the Miami-Dade County Code, as adopted by the Village,
26 and sections 16.2.4 and 10.2.4 of the Village's Land Development Code, as described in the
27 Village's Planning and Zoning Recommendation to the Village of Biscayne Park, which is attached
28 to this resolution; and,

29 WHEREAS, the Village Commission of the Village of Biscayne Park conducted a quasi-
30 judicial hearing on the application at the Ed Burke Recreation Center, located at 11400 NE 9th
31 Court, Biscayne Park on November 6, 2013; and,
32

33 WHEREAS, the Mayor and Village Commission finds, based on substantial competent
34 evidence in the record, that the application is consistent with the Village's Comprehensive Plan and
35 the applicable land development regulations; and,
36

37 WHEREAS, based on the foregoing finding, the Mayor and Village Commission determined
38 to grant the application, with conditions, as provided in this resolution.
39

40 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE**
41 **VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:**
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43 Section 1. The above wheareas clauses are incorporated by reference.
44

45 Section 2. A hearing on the present applications was held on November 6, 2013 in
46 accordance with recognized quasi-judicial hearing procedures and appropriate disclosures by the
47 Commission. A public hearing was conducted and members of the community, the applicant,
48 experts, and staff were sworn in. Pursuant to the hearing, the Village Commission makes the
49 following findings of fact, conclusions of law and order.
50

51 Section 3. Findings of fact and Conclusions of Law:

1 That the requests be approved, as modified. The requests are conditioned as delineated in the
2 exhibits to this resolution, to wit:

3 a. Covenant running with the land - requiring the Landlord, Church of the
4 Resurrection, to keep the parking lot, identified under Folio no.: 17-2231-003-0510, and bearing the
5 following legal description: AM PL GRIFFING BISCAYNE PARK EST PB 14-
6 LOTS 21 THRU 23 BLOCK 17; LOT SIZE 38585 SQUARE FEET; as a parking lot for the church
7 as long as the church use exists. The parking lot is also being uses for staff parking. No parent
8 parking may be authorized.

9 b. Development Agreement with all conditions as voted upon the Village Commission.
10

11 Section 4. Order.

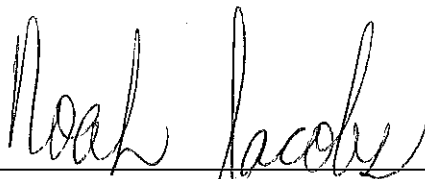
12 This is a final order finding the request consistent with section 33-151.15, of the Miami-
13 Dade County Code of Ordinances, as adopted by the Village, and sections 16.2.4 and 10.2.4 of the
14 Village's Land Development Code.
15

16 Section 5. Record.

17 The record shall consist of the notice of hearing, the applications, documents submitted by
18 the applicant and the applicant's representatives to the Village's Planning and Zoning report in
19 connection with the applications, the staff recommendation and attached cover sheet and documents,
20 the testimony of sworn witnesses and documents presented at the quasi-judicial hearing, and the tape
21 and minutes of the hearing. The record shall be maintained by the Village Clerk.
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23 Section 6. This resolution shall take effect immediately upon approval.
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25 PASSED AND ADOPTED this 6th day of November, 2013
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31 Noah Jacobs, Mayor

32 Attest:

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37 Maria C. Camara, Village Clerk

38 Approved as to form:
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43
44 Village Attorney

**The foregoing resolution upon being
put to a vote, the vote was as follows:**

Mayor Jacobs: Yes
Vice Mayor Anderson: Yes
Commissioner Cooper: Yes
Commissioner Ross: Yes
Commissioner Watts: Yes

This instrument was prepared by:
Name: Eve A. Boutsis, Village Attorney
Village of Biscayne Park
Address: 640 NE 114th Street
Biscayne Park, Florida 33161

(Space reserved for Clerk)

DECLARATION OF RESTRICTIVE COVENANTS

KNOW ALL PERSONS BY THESE PRESENTS, that The Church of the Resurrection, a Florida non-profit corporation, (hereinafter referred to as "Owner", being the owner of having some right, title or interest in the property described in Exhibit "A" that is located in Biscayne Park, Miami-Dade County, Florida, shall abide by the following Declaration of Restrictions covering and running with the land; and,

WHEREAS, the undersigned Owner holds the fee simple title to the land in the Village of Biscayne Park ("Village"), Miami-Dade County, Florida, described in Exhibits "A," and "B" attached hereto, and hereinafter called the "Property," which is supported by the attorney's opinion; and,

WHEREAS, the Owner applied to the Village of Biscayne Park for approval of a development order pursuant to section 16.2.4 of the Village Land Development Code to facilitate a day care use at the property known as 11173 Griffing Boulevard, and has historically used the property identified in Exhibit A to service the parking needs for 11173 Griffing Boulevard (church location), for the church use (legal description attached as Exhibit B); and,

WHEREAS, the Owner agrees that the property identified in Exhibit A, shall not be used for the day care use, for parking (other than for administrative staff parking) or otherwise, due to the zoning of the property in Exhibit A, which does not provide for such a use in that zoning district, but, the Owner does covenant and affirm that it shall maintain the property identified in Exhibit A for the purposes of providing parking for the principal church use at 11173 Griffing Boulevard, for so long as the church use exists.

NOW THEREFORE, IN ORDER TO ASSURE the Village that the representations made by the owner during consideration of the day care Public Hearing item of November 6, 2013, will be abided by the Owner freely, voluntarily and without duress makes the following Declaration of Restrictions covering and running with the

Property for so long as the "Property" is used for a school or similar purposes, the "Property" will be restricted as follows:

The Owner agrees that the property identified in Exhibit A, shall not be used for the day care use, except as it relates to administrative staff parking or otherwise, due to the zoning of the property in Exhibit A, which does not provide for such a use in that zoning district, but, the Owner does covenant and affirm that it shall maintain the property identified in Exhibit A for the purposes of providing parking for the principal church use at 11173 Griffing Boulevard, for so long as the church use exists. This covenant is to ensure that adequate parking is provided for the main use as a house of worship (church) at 11173 Griffing Boulevard, as identified at Exhibit B.

(2) Village Inspection. As further part of this Declaration, it is hereby understood and agreed that any official inspector of the Village, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the conditions herein agreed to are being complied with.

(3) Covenant Running with the Land. This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of the Village and the public welfare. Owner, and their heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the Village of Biscayne Park.

(4) Term. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by the Village of Biscayne Park.

(5) Modification, Amendment, Release. This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the Village Commission of the Village of Biscayne, Florida, whichever by law has jurisdiction over such matters, after public hearing. Should this Declaration of Restrictions be so modified, amended or released, the Director of the Village's Department of Planning and Zoning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

(6) Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

(7) Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

(8) Presumption of Compliance. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the Village, and inspections made and approval of occupancy given by the Village, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.

(9) Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the Village shall be entitled to revoke any approval predicated upon the invalidated portion.

(10) Recording. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owners following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

(11) Acceptance of Declaration. Acceptance of this Declaration does not obligate the Village in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the Village Commission of the Village of Biscayne Park retains its full power and authority to deny each such application in whole or in part and to decline to accept any conveyance or dedication.

(12) Owner. The term Owner shall include the Owner, and its heirs, successors and assigns.

[Execution Pages Follow]

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year above written.

WITNESSES:

[Signature]

Signature

JOHN R. BUSTA

Print Name

[Signature]

Signature

JUNE W. DARYMAN

Print Name

By:

[Signature]

Father Alberto Cutié

Church of the Resurrection

STATE OF FLORIDA)

) SS

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 12 day of February, 2013 by Father Alberto Cutié. He is personally known to me, or has produced personally known as identification and that she/he did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:



Sandra A. Busta
Notary Public, State of Florida

Sandra A. Busta

Print Name

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY - PARKING LOT

Folio Number 17-2231-003-0510

AM PL GRIFFING BISCAYNE PARK EST

PB 14-

LOTS 21 THRU 23 BLOCK 17

LOT SIZE 38585 SQUARE FEET

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY - CHURCH FACILITY AND DAY CARE
PROPERTY

GRIFFING BISCAYNE PARK ESTATES PLAT BOOK 14-1; LOTS 8 THRU
11; BLOCK 18, LOT SIZE 63,451 SQUARE FEET; FOLIO

17-2231-003-0980